

TITLE 8
PUBLIC WAYS AND PROPERTY

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CHAPTER 1

BOULEVARD USE

SECTION:

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- 8-1-3: Paramount Use By City And Utility Companies
- 8-1-4: Prohibited Encroachments; Exceptions
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8-1-1: **MAINTENANCE REQUIRED:** Except as prohibited by this chapter or by other provisions of city ordinances, the owner or occupant of property abutting a public right-of-way shall be responsible for maintenance of the boulevard on their property. At a minimum, the grass shall be cut and any trees or shrubs shall be maintained. (Ord. 106, 9-6-1994)

8-1-2: **IMPROVEMENTS TO BOULEVARD AREAS:** The planting of trees is prohibited in the city right-of-way unless approved as a part of the platting process, however improvements to boulevard areas, except as noted in Section 8-1-4 of this chapter, may be allowed as long as such improvement does not impair, interfere with, or offer a potential threat of damage to city vehicles when snowplowing. The city shall not be responsible or liable for injury to or from such improvements, and the owner or occupant, by placing or using boulevard areas for improvements, agrees in doing so to hold the city harmless for any and all claims of any injury or damage to or from such improvements. Any city owned equipment, such as sewer and water lines, damaged or impaired by such boulevard improvement, shall be remedied at the homeowner's or occupant's cost. (Ord. 106, 9-6-1994; Amended Ord. 426, 1-2-13)

8-1-3: **PARAMOUNT USE BY CITY AND UTILITY COMPANIES:** The city, its agents and/or any utility company authorized by law or the city to use the boulevard areas shall have a paramount right to use the area subject to control by the city. Any improvements in the boulevard shall be removed at the owner's or occupant's expense if the boulevard is needed for a paramount use. The city or its agents or utility company shall not be liable for the repair or replacement of such boulevard improvements damaged or removed during authorized work in the boulevard. (Ord. 106, 9-6-1994)

8-1-4: **PROHIBITED ENCROACHMENTS; EXCEPTIONS:**

- A. No encroachment of any kind shall be permitted within a sight triangle as defined in Subsection 12-2-2 of this code.

- B. No encroachment shall be permitted without City Council approval within eight feet (8') of the curb in urban areas and to the rear of the ditch in rural areas. In cases where there is no ditch, the distance shall be eight feet (8'). The City Council may determine that certain temporary encroachments may be allowed for health, safety and general welfare reasons and will be handled on an as needed/request basis. (Ord. 106A, 7-15-2003)

8-1-5: **VIOLATION; ENFORCEMENT:** A violation of this chapter shall constitute a misdemeanor. The City Administrator or authorized designee, along with the City Attorney, shall be responsible for enforcement of this chapter. (Ord. 106, 9-6-1994)

CHAPTER 2

PUBLIC RIGHT-OF-WAY MANAGEMENT

SECTION:

- 8-2-1: Purpose
- 8-2-2: Definitions
- 8-2-3: Administration Of Provisions
- 8-2-4: Franchises
- 8-2-5: Registration Requirements
- 8-2-6: Permit Requirements
- 8-2-7: Other Obligations
- 8-2-8: Bond Requirements
- 8-2-9: Right To Occupy Rights-Of-Way; Payment Of Fees
- 8-2-10: Time For Completion Of Work; Restoration Requirements
- 8-2-11: Installation Specifications
- 8-2-12: Inspections
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- 8-2-14: Equipment Regulations And Requirements
- 8-2-15: Liability And Indemnification
- 8-2-16: Appeals
- 8-2-17: Exemptions From Provisions
- 8-2-18: Reservation Of Regulatory And Police Powers
- 8-2-19: Severability
- 8-2-20: Nonexclusive Remedies

8-2-1: **PURPOSE:** The purpose of this chapter is to provide regulations for the city:

- A. To manage its public rights-of-way and to recover its rights-of-way management costs; and
- B. To regulate the use of public rights-of-way by providers of telecommunication services, public utility services, and the like, in a fair, efficient, competitively neutral and substantially uniform manner, consistent with and to the extent authorized by Minnesota law, specifically Minnesota Statutes Sections 237.162, 237.163, 237.79, 237.81 and 238.086 and Minnesota Public Utility Commission Rules 7819.0050 through 7819.9950. (Ord. 247, 1-18-2000, eff. 3-6-2000)

8-2-2: **DEFINITIONS:** For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

APPLICANT:	Any person requesting permission to excavate or obstruct a right-of-way.
CITY:	The City of Andover, Minnesota. For purposes of this chapter, "city" means its elected officials, officers, employees, agents or any commission, committee or subdivision acting pursuant to lawfully delegated authority.
CITY COST:	The actual costs incurred by the city for managing rights-of-way including, but not limited to, costs associated with registering of applicants, issuing, processing, and verifying right-of-way permit applications; revoking right-of-way permits; inspecting job sites; creating and updating mapping systems; determining the adequacy of right-of-way restoration; restoring work inadequately performed; maintaining, supporting, protecting, or moving user equipment during right-of-way work; budget analysis; record keeping; legal assistance; systems analysis; and performing all of the other tasks required by this chapter, including other costs the city may incur in managing the provisions of this chapter except as expressly prohibited by law.
CITY INSPECTOR:	Any person authorized by the city to carry out inspections related to the provisions of this chapter.
COMMISSION:	The State Public Utilities Commission.
DEGRADATION:	The accelerated depreciation of the right-of-way caused by excavation in or disturbance of the right-of-way, resulting in the need to reconstruct such right-of-way earlier than would be required if the excavation did not occur, not to exceed the maximum restoration shown in Plates 1 to 13, set forth in Minnesota Rules, Parts 7819.9900 to 7819.9950.
EMERGENCY:	<p>A condition that:</p> <p>A. Poses a clear and immediate danger to life or health, or of a significant loss of property; or</p> <p>B. Requires immediate repair or replacement in order to restore service to a customer.</p>
EQUIPMENT:	Any tangible thing located in any right of way, but shall not include boulevard plantings or gardens planted or maintained in the right-of-way between a person's property and the street curb.

EXCAVATE:	To dig into or in any way remove or physically disturb or penetrate any part of a right-of-way.
EXCAVATION PERMIT:	The permit that, pursuant to this chapter, must be obtained before a person may excavate in a right-of-way. An excavation permit allows the holder to excavate that part of the right-of-way described in such permit.
EXCAVATION PERMIT FEE:	Money paid to the city by an applicant to cover the costs as provided in Subsection 8-2-6E of this chapter.
HIGH DENSITY CORRIDOR:	A designated portion of the public right-of-way within which right-of-way users having multiple and competing facilities may be required to build and install facilities in a common conduit system or other common structure.
LOCAL REPRESENTATIVE:	The person or persons, or designee of such person or persons, authorized by a registrant to accept service and to make decisions for that registrant regarding all matters within the scope of this chapter.
OBSTRUCTION PERMIT:	The permit which, pursuant to this chapter, must be obtained before a person may obstruct a right-of-way, allowing the holder to hinder free and open passage over the specified portion of a right-of-way by placing equipment described therein on the right-of-way for the duration specified therein.
OBSTRUCTION PERMIT FEE:	Money paid to the city by a registrant to cover the costs as provided in Subsection 8-2-6E of this chapter.
PERFORMANCE AND RESTORATION BOND:	Any of the following forms of security: a) individual project bond; b) cash deposit; c) security in the form listed or approved under Minnesota Statutes Section 15.73, Subdivision 3; d) letter of credit in a form acceptable to the city; e) self-insurance in a form acceptable to the city; f) blanket bond for projects within the city or other form of construction bond for time specified in a form acceptable to the city.

PERMITTEE:	Any person to whom a permit to excavate or obstruct a right-of-way has been granted by the city under this chapter.
PERSON:	Any natural or corporate person, business association or other business entity including, but not limited to, a partnership, a sole proprietorship, a political subdivision, a public or private agency of any kind, a utility, a successor or assign of any of the foregoing, or any other legal entity which has or seeks to have equipment located in any right-of-way.
PROBATION:	The status of a person that has not complied with the conditions of this chapter.
PROBATION PERIOD:	One year from the date that a person has been notified in writing that he/she has been put on probation.
REGISTRANT:	Any person who: a) has or seeks to have its equipment located in any right-of-way; or b) in any way occupies or uses, or seeks to occupy or use, the right-of-way or any equipment located in the right-of-way and, accordingly, is required to register with the city.
RIGHT-OF-WAY:	A strip of land acquired by dedication, reservation, prescription or condemnation occupied or intended to be occupied by a street, sidewalk, trail, snow storage, traffic control signs and devices, utilities and utility structures and drainage.
RIGHT-OF-WAY PERMIT:	Either the excavation permit or the obstruction permit, or both, depending on the context, required by this chapter.
RULES:	Rule 7819.0050 through 7819.9950 adopted by the Commission.
TELECOMMUNICATION RIGHT-OF-WAY USER:	A person owning or controlling a facility in the right-of-way, or seeking to own or control the same, that is used or is intended to be used for transporting telecommunication or other voice or data information. For purposes of this chapter, a cable communications system defined and regulated under Minnesota Statutes Chapter 238, and

telecommunications activities related to providing natural gas or electric energy services are not included in this definition for purposes of this chapter. This definition shall not be inconsistent with Minnesota Statutes Section 237.162, Subdivision 4. (Ord. 247, 1-18-2000, eff. 3-6-2000)

8-2-3: **ADMINISTRATION OF PROVISIONS:** The city may designate a principal city official responsible for the administration of the rights-of-way, right-of-way permits, and the ordinances related thereto. The city may delegate any or all of the duties hereunder. (Ord. 247, 1-18-2000, eff. 3-6-2000)

8-2-4: **FRANCHISES:** The city may, in addition to the requirements of this chapter, require any person which has or seeks to have equipment located in any right-of-way to obtain a franchise to the full extent permitted by law, now or hereinafter enacted¹. The terms of any franchise which are in direct conflict with any provisions of this chapter, whether granted prior to or subsequent to enactment of this chapter (excluding the city's police powers which shall always be reserved to the city), shall control and supersede the conflicting terms of this chapter; provided, however, that requirements relating to insurance, bonds, penalties, security funds, letters of credit, indemnification or any other security in favor of the city may be cumulative in the sole determination of the city or unless otherwise negotiated by the city and the franchise grantee. All other terms of this chapter shall be fully applicable to all persons whether franchised or not. (Ord. 247, 1-18-2000, eff. 3-6-2000)

8-2-5: **REGISTRATION REQUIREMENTS:**

A. Registration Required: Each person who occupies, uses, or seeks to occupy or use, the right-of-way or any equipment located in the right-of-way, including by lease, sublease or assignment, or who has, or seeks to have, equipment located in any right-of-way must register with the city. Registration will consist of providing application information to and as required by the city, paying a registration fee, and posting a performance and restoration bond. No person shall construct, install, repair, remove, relocate, or perform any other work on, or use any equipment or any part thereof located in any right-of-way without first being registered with the city. (Ord. 247, 1-18-2000, eff. 3-6-2000)

B. Registration Information:

1. The information provided to the city at the time of registration shall include, but not be limited to:

a. The registrant's name, Gopher State One-call registration

¹ See title 15 of this code.

certificate number, address and e-mail address, if applicable, and telephone and facsimile numbers. (Ord. 247, 1-18-2000, eff. 3-6-2000; amd. 2003 Code)

b. The name, address and e-mail address, if applicable, and telephone and facsimile numbers of a local representative. The local representative or designee shall be available at all times. Current information regarding how to contact the local representative in an emergency shall be provided at the time of registration.

c. A certificate of insurance or self-insurance:

- (1) Shall be on a form approved by the city;
- (2) Shall verify that an insurance policy has been issued to the registrant by an insurance company licensed to do business in the State of Minnesota; or is covered by self-insurance, which the city determines to provide the city with protections equivalent to that of a Minnesota licensed insurance company, legally independent from registrant;
- (3) Shall verify that the registrant is insured against claims for personal injury, including death, as well as claims for property damage arising out of the: a) use and occupancy of the right-of-way by the registrant, its officers, agents, employees and permittees; and b) placement and use of equipment in the right-of-way by the registrant, its officers, agents, employees and permittees, including, but not limited to, protection against liability arising from completed operations, damage to underground equipment and collapse of property;
- (4) Shall name the city as an additional insured as to whom the coverages required herein are in force and applicable and for whom defense will be provided as to all such coverages;
- (5) Shall require that the city be notified thirty (30) days in advance of cancellation of the policy; and
- (6) Shall indicate comprehensive liability coverage, automobile liability coverage, workers' compensation and umbrella coverage in amounts established by the city or the office of risk and employee benefit management in amounts sufficient to protect the city and carry out the purposes and

policies of this chapter.

d. If the registrant is a corporation, a copy of the certificate is required to be filed under Minnesota Statutes Section 300.06 as recorded and certified to by the Secretary of State.

e. A copy of the registrant's certificate of authority from the Minnesota Public Utilities Commission, where the registrant is lawfully required to have such certificate from said commission.

f. Such other information as the city may require.

2. The registrant shall keep all of the information listed above current at all times by providing to the city information of changes within fifteen (15) days following the date on which the registrant has knowledge of any change.

C. Reporting Obligations:

1. Operations:

a. Each registrant shall, at the time of registration and by December 1 of each year, file a construction and major maintenance plan with the city. Registrants must use commercially reasonable efforts to anticipate and plan for all upcoming projects and include all such projects in a construction or major maintenance plan. Such plan shall be submitted using a format designated by the city and shall contain the information determined by the city to be necessary to facilitate the coordination and reduction in the frequency of excavations and obstructions of rights-of-way. The plan shall include, but not be limited to, the following information:

(1) The specific locations and the estimated beginning and ending dates of all projects to be commenced during the next calendar year (in this section, a "next year project"); and

(2) The tentative locations and beginning and ending dates for all projects contemplated for the five (5) years following the next calendar year (in this section, a "five [5] year project").

b. The term "project" in this section shall include both next year projects and five (5) year projects.

c. By January 1 of each year, the city will have available for inspection in its offices a composite list of all projects of which it has

been informed in the annual plans. All registrants are responsible for keeping themselves apprised of the current status of this list. Thereafter, by February 1, each registrant may change any project in its list of next year projects, and must notify the city and all other registrants of all such changes in said list. Notwithstanding the foregoing, a registrant may at any time join in a next year project of another registrant that was listed by the other registrant. (Ord. 247, 1-18-2000, eff. 3-6-2000)

2. Additional Next Year Projects: Notwithstanding the foregoing, the city may, for good cause shown, allow a registrant to submit additional next year projects. Good cause includes, but is not limited to:

- a. To prevent substantial economic hardship to a customer of the permit applicant; or
- b. To allow such customer to materially improve its utility service; or
- c. To allow a new economic development project; and where the permit applicant did not have knowledge of the hardship, the plans for improvement of service, or the development project when said applicant was required to submit its list of next year projects. (Ord. 247, 1-18-2000, eff. 3-6-2000; amd. 2003 Code)

8-2-6: PERMIT REQUIREMENTS:

- A. Permit Required: Except as otherwise provided for in this code, no person may obstruct or excavate any right-of-way without first having obtained the appropriate right-of-way permit from the city to do so.
 - 1. Excavation Permit: An excavation permit is required to allow the holder to excavate that part of the right-of-way described in such permit and/or to hinder free and open passage over the specified portion of the right-of-way by placing equipment described therein, to the extent and for the duration specified therein.
 - 2. Obstruction Permit: An obstruction permit is required to allow the holder to hinder free and open passage over the specified portion of right-of-way by placing equipment, vehicles, or other obstructions described therein on the right-of-way for the duration specified therein.
- B. Applications For Permits:
 - 1. Application for a permit is made to the city. Right-of-way permit applications shall contain, and will be considered complete, only upon compliance with the requirements of the following provisions:

- a. Registration with the city pursuant to this chapter.
- b. Submission of a completed permit application form, including all required attachments, and scaled drawings showing the location and area of the proposed project and the location of all existing and proposed equipment.
- c. Payment of all money due to the city for:
 - (1) Permit fees and costs due;
 - (2) Prior obstructions or excavations;
 - (3) Any loss, damage, or expense suffered by the city as a result of applicant's prior excavations or obstructions of the rights-of-way or any emergency actions taken by the city; and
 - (4) Franchise fees, if applicable.

2. When an excavation permit is requested for purposes of installing additional equipment, and a performance and restoration bond which is in existence is insufficient with respect to the additional equipment in the sole determination of the city, the permit applicant may be required by the city to post an additional performance and restoration bond in accordance with Section 8-2-8 of this chapter.

C. Mapping Data:

- 1. Except as provided in Subsection C3 of this section, each registrant shall provide as a part of its permit application the following information:
 - a. Location and approximate depth of applicant's mains, cables, conduits, switches, and related equipment and facilities with the location based on:
 - (1) Offsets from the property lines, distances from the centerline to the public right-of-way, and curb lines as determined by the city;
 - (2) Coordinates derived from the coordinates system being used by the city; or
 - (3) Any other system agreed upon by the applicant and the city.
 - b. Type and size of the utility facility;

- c. Description showing aboveground appurtenances;
- d. A legend explaining symbols, characters, abbreviations, scale and other data shown on the map; and
- e. Any facilities to be abandoned, if applicable, in conformance with Minnesota Statutes Section 216D.04, Subdivision 3.

2. The applicant shall provide the city information mapping data with specificity and in the format requested by the city for inclusion in the mapping system used by the city. If such format is different from what is currently utilized and maintained by the registrant, the registrant may provide such information in the format that the registrant is currently utilizing. The permit application fee may include the cost to convert the data furnished by the applicant to a format currently in use by the city.

3. Information regarding equipment of telecommunications right-of-way users constructed or located prior to May 10, 1997, need only be supplied in the form maintained; however, all telecommunications rights-of-way users must submit some type of documentary evidence regarding the location of equipment within the rights-of-way of the city.

4. At the request of any registrant, any information requested by the city, which qualifies as a "trade secret" under Minnesota Statutes Section 13.37, Subdivision 1(b), shall be treated as trade secret information as detailed therein. With respect to the provision of mapping data, the city may consider unique circumstances from time to time required to obtain mapping data.

- D. Issuance Of Permit; Conditions: If the city determines that the applicant has satisfied the requirements of this chapter, the city shall issue a permit. The city may impose any reasonable conditions upon the issuance of a permit and the performance of the applicant thereunder in order to protect the public health, safety and welfare, to ensure the structural integrity of the right-of-way, to protect the property and safety of other users of the right-of-way, to minimize the disruption and inconvenience to the traveling public, and to otherwise efficiently manage the use of the right-of-way.

E. Fees ¹ :

1. Fees Established:

- a. Excavation Permit: The excavation permit fee shall be

¹ See subsection 1-7-3C of this code for fee amounts

established by the city in an amount sufficient to recover the following costs:

(1) The city cost.

(2) The degradation of the right-of-way that will result from the excavation.

(3) Restoration, if done or caused to be done by the city.

b. Obstruction Permit: The obstruction permit fee shall be established by the city and shall be in an amount sufficient to recover the city cost.

c. Disruption Fees: The city may establish and impose a disruption fee as a penalty for unreasonable delays in excavations, obstructions, or restoration. Disruption fees will not be imposed if the delay in completion is due to circumstances beyond the control of the applicant, including, without limitation, inclement weather, acts of God or civil strike.

d. Permit Fees During Probationary Period: All permit fees shall be doubled during a probationary period.

2. Payment Of Permit Fees: No excavation permit or obstruction permit shall be issued without payment of all fees required prior to the issuance of such a permit unless the applicant shall agree (in a manner, amount, and substance acceptable to the city) to pay such fees within thirty (30) days of billing therefore.

3. Refunds: Permit fees that were paid for a permit that was revoked for a breach are not refundable. Any refunded permit fees shall be less all city costs up to and including the date of refund.

4. Use Of Permit Fees: All obstruction and excavation permit fees shall be used solely for city management, construction, maintenance and restoration costs of the right-of-way.

F. Work Beyond Permit Dates; New Permit Required: No person may excavate or obstruct the right-of-way beyond the date or dates specified in the permit unless such person receives a new permit or a permit extension is granted.

G. Display Of Permits: Permits issued under this chapter shall be conspicuously displayed at all times at the indicated work site and shall be available for inspection by the City Inspector and authorized city

personnel.

H. Joint Applications:

1. Registrants may jointly make application for permits to excavate or obstruct the right-of-way at the same place and time.
2. Registrants who join in and during a scheduled obstruction or excavation performed by the city, whether or not it is a joint application by two (2) or more registrants or a single application, are not required to pay the obstruction and degradation portions of the permit fee.
3. Registrants who apply for permits for the same obstruction or excavation, which is not performed by the city, may share in the payment of the obstruction or excavation permit fee. Registrants must agree among themselves as to the portion each will pay and indicate the same on their applications.

I. Supplementary Applications:

1. Change In Work Area: A right-of-way permit is valid only for the area of the right-of-way specified in the permit. No permittee may perform any work outside the area specified in the permit, except as provided herein. Any permittee who determines that an area greater than that specified in the permit must be obstructed or excavated must, before working in that greater area: a) make application for a permit extension and pay any additional fees necessitated thereby; and b) be granted a new permit or permit extension.
2. Change Of Dates:
 - a. A right-of-way permit is valid only for the dates specified in the permit. No permittee may begin its work before the permit start date or, except as provided herein, continue working after the end date. If a permittee does not finish the work by the permit end date, it must make application for a new permit for the additional time it needs, and receive the new permit or an extension of the old permit before working after the end date of the previous permit. This supplementary application must be done before the permit end date.
 - b. If the obstruction or evacuation of the right-of-way begins later or ends sooner than the date given on the permit, permittee shall notify the city of the accurate information as soon as this information is known.

- J. Denial Of Permit: The city may, in accordance with Minnesota Statutes Section 237.163, Subdivision 4, deny any application for a permit as provided in this subsection:

1. Mandatory Denial: Except in the case of an emergency, no right-of-way permit will be granted:

- a. To any person required by Subsection 8-2-5A of this chapter to be registered who has not done so;
- b. To any person required by Subsection 8-2-5C of this chapter to file an annual report but has failed to do so;
- c. For any next year project not listed in the construction and major maintenance plan required under Subsection 8-2-5C of this chapter unless the person used commercially reasonable efforts to anticipate and plan for the project;
- d. For any project which requires the excavation of any portion of a right-of-way which was constructed or reconstructed within the preceding five (5) years.
- e. To any person who has failed within the past three (3) years to comply, or is presently not in full compliance, with the requirements of this chapter;
- f. To any person as to whom there exists grounds for the revocation of a permit under Subsection K of this section; and
- g. If, in the sole discretion of the city, the issuance of a permit for the particular date and/or time would cause a conflict or interfere with an exhibition, celebration, festival, or any other event. The city, in exercising this discretion, shall be guided by the safety and convenience of ordinary travel of the public over the rights-of-way, and by considerations relating to the public health, safety and welfare.

2. Permissive Denial: The city may deny a permit in order to protect the public health, safety and welfare, to protect interference with the safety and convenience of ordinary travel over the rights-of-way, or when necessary to protect the right-of-way and its users. The city may consider one or more of the following factors:

- a. The extent to which right-of-way space where the permit is sought is available;

- b. The competing demands for the particular space in the right-of-way;
- c. The availability of other locations in the right-of-way or in other rights-of-way for the equipment of the permit applicant;
- d. The applicability of ordinances or other regulations of the rights-of-way that affect location of equipment in the rights-of-way;
- e. The degree of compliance of the applicant with the terms and conditions of its franchise, if any, this chapter, and other applicable ordinances and regulations;
- f. The degree of disruption to surrounding communities and businesses that will result from the use of that part of the right-of-way;
- g. The condition and age of the right-of-way, and whether and when it is scheduled for total or partial reconstruction; and
- h. The balancing of the costs of disruption to the public and damage to the right-of-way, against the benefits to that part of the public served by the expansion into additional parts of the right-of-way.

3. Discretionary Issuance: Notwithstanding the provisions of Subsections J1c and J1d of this section, the city may issue a permit in any case where the permit is necessary: a) to prevent substantial economic hardship to a customer of the permit applicant; or b) to allow such customer to materially improve its utility service; or c) to allow a new economic development project; and where the permit applicant did not have knowledge of the hardship, the plans for improvement of service, or the development project when said applicant was required to submit its list of next year projects.

4. Permits For Additional Next Year Projects: Notwithstanding the provisions of Subsection J1c of this section, the city may issue a permit to a registrant who was allowed under Subsection 8-2-5C2 of this chapter to submit an additional next year project, or in the event the registrant demonstrates that it used commercially reasonable efforts to anticipate and plan for the project, such permit to be subject to all other conditions and requirements of law, including such conditions as may be imposed under Subsection D of this section.

K. Revocation Of Permits:

1. Criteria; Substantial Breach: Registrants hold permits issued pursuant

to this chapter as a privilege and not as a right. The city reserves its right, as provided herein and in accordance with Minnesota Statutes Section 237.163, Subdivision 4, to revoke any right-of-way permit, without fee refund, in the event of a substantial breach of the terms and conditions of any statute, ordinance, rule or regulation, or any condition of the permit. A substantial breach by permittee shall include, but shall not be limited to, the following:

- a. The violation of any material provision of the right-of-way permit;
- b. An evasion or attempt to evade any material provision of the right-of-way permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the city or its citizens;
- c. Any material misrepresentation of fact in the application for a right-of-way permit;
- d. The failure to maintain the required bonds and/or insurance;
- e. The failure to complete the work in a timely manner; or
- f. The failure to correct a condition indicated on an order issued pursuant to Subsection 8-2-12C of this chapter.

2. Authority To Impose Additional Conditions: If the city determines that the permittee has committed a substantial breach of a term or condition of any statute, ordinance, rule, regulation or any condition of the permit, the city shall make a written demand upon the permittee to remedy such violation. The demand shall state that continued violations may be cause for revocation of the permit. Further, a substantial breach, as stated herein, will allow the city, at the city's discretion, to place additional or revised conditions on the permit.

3. Impose Probationary Period: Within three (3) business days of receiving notification of the breach, permittee shall contact the city with a plan, acceptable to the City Inspector, for its correction. Permittee's failure to so contact the City Inspector, permittee's failure to submit an acceptable plan, or permittee's failure to reasonably implement the approved plan shall be cause for immediate revocation of the permit. Further, permittee's failure to so contact the City Inspector, or permittee's failure to submit an acceptable plan, or permittee's failure to reasonably implement the approved plan shall automatically place the permittee on probation for one full year.

4. Conditions Breached: From time to time, the city may establish a list of conditions of the permit which, if breached, will automatically place the

permittee on probation for one full year, such as, but not limited to, working out of the allotted time period or working on right-of-way outside of the permit.

5. Automatic Revocation: If a permittee, while on probation, commits a breach as outlined above, permittee's permit will automatically be revoked, and permittee will not be allowed further permits for one full year, except for emergency repairs.

6. Permittee Liable For Costs: If a permit is revoked, the permittee shall also reimburse the city for the city's reasonable costs, including restoration costs and the costs of collection and reasonable attorney fees, incurred in connection with such revocation. (Ord. 247, 1-18-2000, eff. 3-6-2000)

8-2-7: **OTHER OBLIGATIONS:**

- A. Obtaining a right-of-way permit does not relieve permittee of its duty to obtain all other necessary permits, licenses, franchises or other authorizations and to pay all fees required by the city, any other city, county, state or federal rules, laws or regulations. A permittee shall comply with all requirements of local, state and federal laws, including Minnesota Statutes Sections 216D.01 through 216D.09 ("One Call Excavation Notice System"). A permittee shall perform all work in conformance with all applicable codes and established rules and regulations, and is responsible for all work done in the right-of-way pursuant to its permit, regardless of who performs the work.
- B. Except in the case of an emergency, and with the approval of the city, no right-of-way obstruction or excavation may be performed when seasonally prohibited or when conditions are unreasonable for such work.
- C. A permittee shall not so obstruct a right-of-way that the natural free and clear passage of water through the gutters or other waterways shall be interfered with. Private vehicles cannot be parked within or adjacent to the permit area. The loading or unloading of trucks adjacent to a permit area is prohibited unless specifically authorized by the permit. (Ord. 247, 1-18-2000, eff. 3-6-2000)

8-2-8: **BOND REQUIREMENTS:** The performance and restoration bond required in Subsections 8-2-5A, 8-2-6B2, 8-2-10B2, and 8-2-14E1b(3) of this chapter shall be in an amount determined in the city's sole discretion, sufficient to serve as security for the full and complete performance of the obligations under this chapter, including any costs, expenses, damages, or loss the city pays or incurs because of any failure to comply with this chapter or any other applicable laws, regulations or standards. During periods of construction, repair or restoration of rights-of-way or equipment in rights-of-way, the performance and

restoration bond shall be in an amount sufficient to cover one hundred percent (100%) of the estimated cost of such work, as documented by the person proposing to perform such work, or in such lesser amount as may be determined by the city, taking into account the amount of equipment in the right-of-way, the location and method of installation of the equipment, the conflict or interference of such equipment with the equipment of other persons, and the purposes and policies of this chapter. Sixty (60) days after completion of the work, the performance and restoration bond may be reduced in the sole determination of the city. (Ord. 247, 1-18-2000, eff. 3-6-2000)

8-2-9: RIGHT TO OCCUPY RIGHTS-OF-WAY; PAYMENT OF FEES:
Any person required to register under Subsection 8-2-5A of this chapter, who occupies, uses, or places its equipment in the right-of-way, is hereby granted a right to do so if and only so long as it: a) timely pays all fees as provided herein; and b) complies with all other requirements of law. The grant of right in this section is expressly conditioned on, and is subject to, the police powers of the city, continuing compliance with all provisions of law now or hereinafter enacted, including this chapter as it may be from time to time amended and, further, is specifically subject to the obligation to obtain any and all additional required authorizations, whether from the city or other body or authority. (Ord. 247, 1-18-2000, eff. 3-6-2000)

8-2-10: TIME FOR COMPLETION OF WORK; RESTORATION REQUIREMENTS:

- A. The work to be done under the permit, and the restoration of the right-of-way as required herein, must be completed within the dates specified in the permit, increased by as many days as work could not be done because of circumstances constituting force majeure or when work was prohibited as unseasonable or unreasonable under Subsection 8-2-7B of this chapter, all in the sole determination of the city. In addition to repairing its own work, the permittee must restore the general area of the work, and the surrounding areas, including the paving and its foundations, to the same condition that existed before the commencement of the work, and must inspect the area of the work and use reasonable care to maintain the same condition for thirty six (36) months thereafter. If a new firm disturbs a work area for which a permit was previously granted, the new firm shall assume responsibility for the restoration work for thirty six (36) months thereafter. The city may release the original permit fee. (Ord. 247, 1-18-2000, eff. 3-6-2000)
- B. In its application for an excavation permit, the permittee may choose to have the city restore the right-of-way. In any event, the city may determine to perform the right-of-way restoration and shall require the permittee to pay a restoration fee to provide for reimbursement of all costs associated

with such restoration. In the event permittee elects not to perform restoration, city may, in lieu of performing the restoration itself, impose a fee to fully compensate for the resultant degradation as well as for any and all additional city costs associated therewith. Such fee for degradation shall compensate the city for costs associated with a decrease in the useful life of the right-of-way caused by excavation and shall include a restoration fee component. Payment of such fee does not relieve a permittee from any restoration obligation, including but not limited to, replacing and compacting the sub-grade base material and the excavation. (Ord. 247, 1-18-2000, eff. 3-6-2000; amd. 2003 Code)

1. City Restoration: If the city restores the right-of-way, the permittee shall pay the costs thereof within thirty (30) days of billing. If, during the thirty six (36) months following such restoration, the right-of-way settles due to permittee's excavation or restoration, the permittee shall pay to the city, within thirty (30) days of billing, the cost of repairing said right-of-way.

2. Permittee Restoration: If the permittee chooses at the time of application for an excavation permit to restore the right-of-way itself, such permittee shall post an additional performance and restoration bond in an amount determined by the city to be sufficient to cover the cost of restoring the right-of-way to its pre-excavation condition. If, twenty four (24) months after completion of the restoration of the right-of-way, the city determines that the right-of-way has been properly restored, the surety on the performance and restoration bond posted pursuant to this subsection shall be released.

C. The permittee shall perform the work according to the standards and with the materials specified by the city and in compliance with Minnesota Rule 7819.1100. The city shall have the authority to prescribe the manner and extent of the restoration, and may do so in written procedures of general application or on a case by case basis. The city, in exercising this authority, shall be guided but not limited by the following standards and considerations:

1. The number, size, depth and duration of the excavations, disruptions or damage to the right-of-way;

2. The traffic volume carried by the right-of-way; the character of the neighborhood surrounding the right-of-way;

3. The pre-excavation condition of the right-of-way; the remaining life expectancy of the right-of-way affected by the excavation;

4. Whether the relative cost of the method of restoration to the permittee is in reasonable balance with the prevention of an accelerated depreciation

of the right-of-way that would otherwise result from the excavation, disturbance or damage to the right-of-way; and

5. The likelihood that the particular method of restoration would be effective in slowing the depreciation of the right-of-way that would otherwise take place. Notwithstanding the foregoing, the maximum limits of restoration methods and area requirements the city will impose are found in PUC Plates 1 to 13, shown in Parts 7819.9900 to 7819.9950.

- D. By choosing to restore the right-of-way itself, the permittee guarantees its work and shall maintain it for thirty-six (36) months following its completion. During this thirty-six (36) month period, it shall, upon notification from the city, correct all restoration work to the extent necessary, using the method required by the city. Said work shall be completed within ten (10) calendar days of the receipt of the notice from the city, not including days during which work cannot be done because of circumstances constituting force majeure or days when work is prohibited as unseasonal or unreasonable under Subsection 8-2-7B of this chapter, all in the sole determination of the city.
- E. If the permittee fails to restore the right-of-way in the manner and to the condition required by the city, or fails to satisfactorily and timely complete all repairs required by the city, the city, at its option, may perform or cause to be performed such work. In that event, the permittee shall pay to the city, within thirty (30) days of billing, the cost of restoring the right-of-way. If permittee fails to pay as required, the city may exercise its rights under the performance and restoration bond. (Ord. 247, 1-18-2000, eff. 3-6-2000)

8-2-11: **INSTALLATION SPECIFICATIONS:** In accordance with Minnesota Statutes Sections 237.162, Subdivision 8(3) and 237.163, Subdivision 8, and the Commission rules, all work performed in the right-of-way shall be done in conformance with the "Standard Specifications for Street Openings" as promulgated by the city and at a location as may be required by Subsection 8-2-14A2 of this chapter. The city may enforce local standards pursuant to its inherent and historical police power authority, so long as such standards do not impose greater requirements than those found in the Commission rules. (Ord. 247, 1-18-2000, eff. 3-6-2000)

8-2-12: **INSPECTIONS:**

- A. When the work under any permit hereunder is completed, the permittee shall notify the city.
- B. Permittee shall make the work site available to the City Inspector and to all others as authorized by law for inspection at all reasonable

times during the execution and upon completion of work.

- C. At the time of inspection, the City Inspector may order the immediate cessation of any work that poses a serious threat to the life, health, safety or well-being of the public. The City Inspector may issue an order to the registrant for any work that does not conform to the applicable standards, conditions or codes. The order shall state that failure to correct the violation will be cause for revocation of the permit. Within ten (10) days after issuance of the order, the registrant shall present proof to the city that the violation has been corrected. If such proof has not been presented within the required time, the city may revoke the permit pursuant to Subsection 8-2-6K of this chapter. (Ord. 247, 1-18-2000, eff. 3-6-2000)

8-2-13: WORK DONE WITHOUT A PERMIT:

A. Emergency Situations:

1. Each registrant shall immediately notify the city or the city's designee of any event regarding its equipment that it considers to be an emergency. The registrant may proceed to take whatever actions are necessary in order to respond to the emergency. Within three (3) business days after the occurrence of the emergency, the registrant shall apply for the necessary permits, pay the fees associated therewith and fulfill the rest of the requirements necessary to bring itself into compliance with this chapter for the actions it took in response to the emergency.

2. In the event that the city becomes aware of an emergency regarding a registrant's equipment, the city will attempt to contact the local representative of each registrant affected, or potentially affected, by the emergency. In any event, the city may take whatever action it deems necessary in order to respond to the emergency, the cost of which shall be borne by the registrant whose equipment occasioned the emergency.

- B. Non-emergency Situations: Except in the case of an emergency, any person who, without first having obtained the necessary permit, obstructs or excavates a right-of-way must subsequently obtain a permit, pay double the normal fee for said permit, pay double all the other fees required by city ordinance, including, but not limited to, criminal fines and penalties, deposit with the city the fees necessary to correct any damage to the right-of-way and comply with all of the requirements of this chapter. (Ord. 247, 1-18-2000, eff. 3-6-2000)

8-2-14: EQUIPMENT REGULATIONS AND REQUIREMENTS:

A. Location Of Equipment:

1. Undergrounding: Unless otherwise permitted by an existing franchise or unless existing aboveground equipment is repaired or replaced, or unless unfeasible such as in the provision of electric service at certain voltages, new construction, the installation of new equipment, and the replacement of old equipment shall be done underground or contained within buildings or other structures in conformity with applicable codes unless otherwise agreed to by the city in writing, and such agreement is reflected in applicable permits. (Ord. 247, 1-18-2000, eff. 3-6-2000; amd. 2003 Code)

2. High-Density Corridor:

a. The city may assign specific high-density corridors within the right-of-way or any particular segment thereof as may be necessary for each type of equipment that is or, pursuant to current technology the city expects will some day be located within the right-of-way. Excavation, obstruction, or other permits issued by the city involving the installation or replacement of equipment may designate the proper corridor for the equipment at issue, and such equipment must be located accordingly.

b. In the event the city desires to establish a high-density corridor, it shall include the elements required in Commission Rule 781.90200.

c. Any registrant whose equipment, prior to enactment of this chapter, is located in the right-of-way in a position at variance with the corridors established by the city shall, no later than at the time of the next reconstruction or excavation of the area where its equipment is located, move that equipment to its assigned position within the right-of-way, unless this requirement is waived by the city for good cause shown, upon consideration of such factors as the remaining economic life of the facilities, public safety, customer service needs and hardship to the registrant.

3. Nuisance Declared: One year after the effective date hereof, any equipment found in a right-of-way that has not been registered shall be deemed to be a nuisance. The city may exercise any remedies or rights it has at law or in equity, including, but not limited to, abating the nuisance or taking possession of the equipment and restoring the right-of-way to a usable condition.

4. Limitation Of Space: To protect health, safety and welfare, the city shall have the power to prohibit or limit the placement of new or additional equipment within the right-of-way if there is insufficient space to accommodate all of the requests of registrants or persons to occupy and use the right-of-way. In making such decisions, the city shall strive to the

extent possible to accommodate all existing and potential users of the right-of-way, but shall be guided primarily by considerations of the public interest, the public's needs for the particular service, the condition of the right-of-way, the time of year with respect to essential utilities, the protection of existing equipment in the right-of-way, and future city plans for public improvements and development projects which have been determined to be in the public interest.

5. Relocation Of Equipment: The person must promptly and at his own expense, with due regard for seasonal working conditions, permanently remove and relocate his equipment and facilities in the right-of-way whenever the city requests such removal and relocation, and shall restore the right-of-way to the same condition it was in prior to said removal or relocation. The city may take such requests in order to prevent interference by the company's equipment or facilities with: a) a present or future city use of the right-of-way for a public project; b) the public health or safety; c) the safety and convenience or travel over the rights-of-way. The city shall pay all costs for moves not associated with substantial city projects within the right-of-way within the next six (6) months.

6. Pre-excavation Equipment Location: In addition to complying with the requirements of Minnesota Statutes Sections 216D.01 to 216D.09 ("One Call Excavation Notice System") before the start date of any right-of-way excavation, each registrant who has equipment located in the area to be excavated shall mark the horizontal and approximate vertical placement of all said equipment. Any registrant whose equipment is less than twenty inches (20") below a concrete or asphalt surface shall notify and work closely with the excavation contractor in an effort to establish the exact location of its equipment and the best procedures for excavation.

- B. City To Move Equipment: When the city does work in the right-of-way and finds it necessary to maintain, support or move a registrant's facilities to protect it, the city shall notify the local representative as early as is reasonably possible. Should the registrant fail to respond in a timely manner to move or support the facility in question, the costs associated therewith with the city moving or supporting the facility will be billed to the registrant and must be paid within thirty (30) days from the date of billing.
- C. Damage To Other Equipment: Each registrant shall be responsible for the cost of repairing any facilities in the right-of-way that it or its facilities damage. Each registrant shall be responsible for the cost of repairing any damage to the facilities of another registrant caused during the city's response to an emergency occasioned by the registrant's facilities.
- D. Right Of Way Vacation: If the city vacates a right-of-way that contains the

facilities of a registrant, the registrant's rights in the vacated right-of-way are governed by Minnesota Rules 7819.3200. If the vacation requires the relocation of registrant or permittee equipment and: 1) if the vacation proceedings are initiated by the registrant or permittee, the registrant or permittee must pay the relocation costs; or 2) if the vacation proceedings are initiated by a person other than the registrant or permittee, such other person must pay the relocation costs.

E. Abandoned, Unusable Equipment:

1. A registrant who has determined to discontinue its operations with respect to any equipment in any right-of-way, or segment or portion thereof, in the city must either

a. Provide information satisfactory to the city that the registrant's obligations for its equipment in the right-of-way under this chapter have been lawfully assumed by another registrant; or

b. Submit to the city a proposal and instruments for transferring ownership of its equipment to the city. If a registrant proceeds under this clause, the city may, at its option:

(1) Purchase the equipment; or

(2) Require the registrant, at its own expense, to remove it; or

(3) Require the registrant to post an additional bond or an increased bond amount sufficient to reimburse the city of reasonably anticipated costs to be incurred in removing the equipment.

2. Equipment of a registrant which fails to comply with Subsection E1 of this section and which, for two (2) years, remains unused, shall be deemed to be abandoned. Abandoned equipment is deemed to be a nuisance. The city may exercise any remedies or rights it has at law or in equity, including, but not limited to: a) abating the nuisance; b) taking possession of the equipment and restoring it to a usable condition; c) requiring removal of the equipment by the registrant or by the registrant's surety; or d) exercising its rights pursuant to the performance and restoration bond.

3. Any registrant who has unusable equipment in any right-of-way shall remove it from the right-of-way during the next scheduled excavation, unless this requirement is waived by the city. (Ord. 247, 1-18-2000, eff. 3-6-2000)

8-2-15: **LIABILITY AND INDEMNIFICATION:**

A. Non-liability Of City:

1. By reason of the acceptance of a registration or the grant of a right-of-way permit, the city does not assume any liability: a) for injuries to persons, damage to property, or loss of service claims by parties other than the registrant or the city; or b) for claims or penalties of any sort resulting from the installation, presence, maintenance, or operation of equipment by registrants or activities of registrants.

2. In placing any equipment, or allowing it to be placed, in the right-of-way, the city is not liable for any damages caused thereby to any registrant's equipment that is already in place. No registrant is entitled to rely on the provisions of this chapter, and no special duty is created as to any registrant. This chapter is enacted to protect the general health, welfare and safety of the public at large.

B. Indemnification: By registering with the city, or by accepting a permit under this chapter, a registrant or permittee agrees to defend and indemnify the city in accordance with the provisions of Minnesota Rules 7819.1250. (Ord. 247, 1-18-2000, eff. 3-6-2000)

8-2-16: **APPEALS:**

A. A person that:

1. Has been denied registration;

2. Has been denied a right-of-way permit;

3. Has had the right-of-way permit revoked;

4. Believes that the fees imposed on the user by the city do not conform to the requirements of law; or

5. Believes that conditions imposed are arbitrary or capricious may have the denial, revocation, or fee imposition reviewed, upon written request, by the City Council. The City Council shall act on a timely written request at its next regularly scheduled meeting. A decision by the City Council affirming the denial, revocation, or fee imposition must be in writing and supported by written findings establishing the reasonableness of the decision.

B. Upon affirmation by the City Council of the denial, revocation, or fee

imposition, the right-of-way user shall have the right to have the matter resolved by binding arbitration. Binding arbitration must be before an arbitrator agreed to by both the city and the person. If the parties cannot agree on an arbitrator, the matter must be resolved by a three (3) person arbitration panel made up of one arbitrator selected by the city, one arbitrator selected by the person, and one arbitrator selected by the other two (2) arbitrators. The costs and fees of a single arbitrator shall be borne equally by the city and the person. In the event there are three (3) arbitrators, each party shall bear the expense of its own arbitrator and shall jointly and equally bear with the other party the expense of the third arbitrator and of the arbitration.

- C. Each party to the arbitration shall pay its own costs, disbursements, and attorney fees. (Ord. 247, 1-18-2000, eff. 3-6-2000)

8-2-17: **EXEMPTIONS FROM PROVISIONS:** Nothing herein shall be construed to repeal or amend the provisions of a city ordinance permitting persons to plant or maintain boulevard plantings or gardens in the area of the right-of-way between their property and the street curb. Persons planting or maintaining boulevard plantings or gardens shall not be deemed to use or occupy the right-of-way, and shall not be required to obtain any permits to satisfy any other requirements for planting or maintaining such boulevard plantings or gardens under this chapter. However, excavations deeper than twelve inches (12") are subject to the permit requirements of Section 8-2-6 of this chapter. (Ord. 247, 1-18-2000, eff. 3-6-2000)

8-2-18: **RESERVATION OF REGULATORY AND POLICE POWERS:** The city, by the granting of a right-of-way permit or by registering a person under this chapter, does not surrender or to any extent lose, waive, impair, or lessen the lawful powers and rights which it has now or which may be hereafter vested in the city under the Constitution and Statutes of the State of Minnesota to regulate the use of the right-of-way by the permittee; and the permittee, by its acceptance of a right-of-way permit or of registration under those provisions agrees that all lawful powers and rights, regulatory power, or police power, or otherwise, as are or the same may be from time to time vested in or reserved to the city, shall be in full force and effect and subject to the exercise thereof by the city at any time. A permittee or registrant is deemed to acknowledge that its rights are subject to the regulatory and police powers of the city to adopt and enforce general ordinances necessary to the safety and welfare of the public and is deemed to agree to comply with all applicable general laws and ordinances enacted by the city pursuant to such powers. Any conflict between the provisions of a registration or of a right-of-way permit and any other present or future exercise of the city's regulatory or police powers shall be resolved in favor of the latter. (Ord. 247, 1-18-2000, eff. 3-6-2000; amd. 2003 Code)

8-2-19: **SEVERABILITY:** If any section, subsection, sentence, clause,

phrase, or portion of this chapter is for any reason held invalid or unconstitutional by any court or administrative agency of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof. If a regulatory body or a court of competent jurisdiction should determine by a final, non-appealable order that any permit, right or registration issued under this chapter or any portion of this chapter is illegal or unenforceable, then any such permit, right or registration granted or deemed to exist there under shall be considered as a revocable permit with a mutual right in either party to terminate without cause upon giving sixty (60) days' written notice to the other. The requirements and conditions of such a revocable permit shall be the same requirements and conditions as set forth in the permit, right or registration, respectively, except for conditions relating to the term of the permit and the right of termination. If a permit, right or registration shall be considered a revocable permit as provided herein, the permittee must acknowledge the authority of the City Council to issue such revocable permit and the power to revoke it. Nothing in this chapter precludes the city from requiring a franchise agreement with the applicant, as allowed by law, in addition to requirements set forth herein. (Ord. 247, 1-18-2000, eff. 3-6-2000)

8-2-20: **NONEXCLUSIVE REMEDIES:** The remedies provided in this chapter and other provisions of this code are not exclusive or in lieu of other rights and remedies that the city may have at law or in equity. The city is hereby authorized to seek legal and equitable relief for actual or threatened injury to the public rights-of-way, including damages to the rights-of-way, whether or not caused by a violation of any of the provisions of this chapter or other provisions of the city. (Ord. 247, 1-18-2000, eff. 3-6-2000)

CHAPTER 3

WATERCRAFT ON RUM RIVER

SECTION:

- 8-3-1: Purpose
- 8-3-2: Definitions
- 8-3-3: Slow No-Wake Speed And Zones
- 8-3-4: Information, Notices And Markings
- 8-3-5: Exemptions From Provisions
- 8-3-6: Enforcement
- 8-3-7: Violation A Misdemeanor

8-3-1: **PURPOSE:** It is the purpose of the city to regulate the operation and speed of watercraft on the Rum River. The limitations contained in this chapter are designed to prevent and limit the erosion that is occurring to the banks and shoreline of the Rum River within the city. The heavy wakes from waterskiing, jet skiing and speed boating create wave action that is eroding the shoreline, banks and bluffs along the river and is adverse to the public's interest in maintaining and preserving the shoreline. People swimming, canoeing and using the river more passively are placed in jeopardy by waterskiing, jet skiing and speed boating. This chapter is designed to protect the health, safety and general welfare of the public. (Ord. 231, 4-20-1999)

8-3-2: **DEFINITIONS:** The following words and phrases, when used in this chapter, shall have the meanings set forth as follows:

OPERATE: To navigate or otherwise use a watercraft.

PERSON: Includes an individual, partnership, corporation or any body of persons, whether incorporated or formed as an association or not.

RUM RIVER: That body of water that borders the cities of Andover and Ramsey.

SLOW NO-WAKE: The operation of a watercraft at the slowest possible speed necessary to maintain steerage and in no case greater than five (5) miles per hour.

WATERCRAFT: As defined in Minnesota Statutes Section 86B.005, Subdivision 18. (Ord. 231, 4-20-1999)

8-3-3: **SLOW NO-WAKE SPEED AND ZONES:**

- A. No person shall operate a watercraft at greater than a slow no-wake speed (5 miles per hour) within the following slow no-wake zones in the Rum River identified on the map attached to Ordinance 231 on file in the office of the City Clerk for public use and inspection: (Ord. 231, 4-20-1999; amd. 2003 Code)

<u>Zone</u>	<u>Location (Mile Marker)</u>
1	4.4 - 5.2

- B. The slow no-wake zone shall be in effect twenty-four (24) hours a day, all year. (Ord. 231, 4-20-1999)

8-3-4: **INFORMATION, NOTICES AND MARKINGS:** The County Sheriff's Department shall be responsible for informing the public, posting notification at all public accesses and marking or buoying all slow no-wake zones affected by this chapter as necessary to give reasonable notice to the speed restrictions established. (Ord. 231, 4-20-1999)

8-3-5: **EXEMPTIONS FROM PROVISIONS:**

- A. Authorized resource management, emergency and enforcement personnel, when acting in the performance of their duties, shall be exempt from the provisions of this chapter.
- B. Temporary exemptions from this chapter may be granted to local, state or federal law enforcement agencies. (Ord. 231, 4-20-1999)

8-3-6: **ENFORCEMENT:** Primary responsibility for enforcement of this chapter shall rest with the County Sheriff's Department. This, however shall not preclude enforcement by other licensed peace officers. (Ord. 231, 4-20-1999)

8-3-7: **VIOLATION A MISDEMEANOR:** Any person violating any provision of this chapter shall be guilty of a misdemeanor as defined by state law. (Ord. 231, 4-20-1999)

CHAPTER 4
PARKS AND RECREATION AREAS

SECTION:

- 8-4-1: Regulations
8-4-2: Violations; Penalties

8-4-1: **REGULATIONS:** The use and occupancy of all city parks, recreation areas, and open space owned, rented and/or leased by and located in the city shall be subject to the following regulations (Amended Ord. 399, 9-7-10):

- A. Abusive Language; Noisy Conduct: Persons engaged in offensive, obscene or abusive language or boisterous and noisy conduct tending reasonably to arouse alarm, anger or resentment will not be allowed.
- B. Advertising, Selling And Solicitation: No advertising, unapproved selling or solicitation is allowed. An Exclusive Use Permit may be approved by the City Council and issued by the City Clerk for the selling of food, alcoholic or nonalcoholic beverages as established by City Council resolution.
- C. Alcoholic Beverages: Consumption or possession of alcoholic beverages is not permitted unless a permit is obtained under Subsection B of this section.
- D. Fires ¹ : It shall be unlawful to build or attempt to build a fire except in areas designated for such purpose. No person shall drop, throw, or otherwise scatter lighted matches, burning cigarettes or cigars, tobacco, paper or other flammable material.
- E. Firearms And Explosives: No firearms (as defined by city ordinance) ² or explosives shall be present or used unless approved by the City Council. Authorized law enforcement officials shall be exempt from this regulation.
- F. Gambling: Gambling shall not be allowed.
- G. Golfing: No person shall be allowed to golf or practice golf.

¹ See also title 7, chapter 3 of this code.

² See subsection 5-4-1A of this code.

- H. Hours: City parks, recreation areas, and open space shall not be occupied or used, nor may any motor vehicles be parked therein, between eleven o'clock (11:00) P.M. and six o'clock (6:00) A.M., except when participating in an activity for which a permit has been granted by the city. The Skate Park located at Sunshine Park is not to be occupied or used from dusk to dawn. (Amended Ord. 399, 9-7-10; Amended Ord. 402, 12-21-10)
- I. Operation Of Motor Vehicles:
1. No person shall ride or drive a vehicle at a rate of speed exceeding that posted in city parks or fifteen (15) miles per hour.
 2. Drivers shall confine the operation of any motorized vehicle to roads, parking areas, or other areas specifically designated as temporary parking areas by the City Council and/or their designated representatives.
 3. It shall be unlawful for any self-propelled vehicle, including, but not limited to, "motor vehicles" as defined in Minnesota Statutes Chapter 169, other self-propelled vehicles, go-carts, and snowmobiles, to travel within city parks, recreation areas, or open space, except on established roadways, trails, or other areas designated for such purpose. Authorized emergency vehicles, city vehicles and wheelchairs for the handicapped or disabled are exempt from this regulation ¹. (Amended Ord. 399, 9-7-10)
- J. Damage To Park Or Open Space Property: It shall be unlawful to mark, deface, disfigure, injure, tamper with or dispose of or remove any buildings, bridges, playground equipment, tables, benches, fireplaces, railings, paving or paving materials, public utilities or parts or appurtenances thereof, signs, notices (temporary or permanent), monuments, stakes, posts, equipment, facilities or park property or appurtenances, whatsoever, either real or personal. (Amended Ord. 399, 9-7-10)
- K. Pets And Animals:
1. Leashed Animals: All domestic animals (such as dogs, cats and similar animals) must be kept leashed ². Exception: Dogs are allowed to be unleashed in a designated and/or authorized municipal or county dog park area. (Amended Ord. 402, 12-21-10)
 2. Removal Of Excrement: Owners are required to clean up and dispose

¹ See title 6, chapter 3 of this code.

² See also subsection 5-1A-5A of this code.

of their pet's excrement³.

3. Horses shall not be allowed in any park or open space area including the city trail system. (Amended Ord. 399, 9-7-10)
4. Hunting, Trapping, Tormenting: No person shall hunt, molest, harm, kill, trap, chase, tease or throw missiles at any animal.
5. Removal Or Possession Of Young Or Eggs: No person without city permission shall remove or have in possession the young of any wild animal or have the eggs or nest or young of any reptile, mammal or bird; exception to the foregoing is made in that snakes known to be poisonous, such as rattlesnakes, and/or otherwise hazardous to human safety, may be killed or removed for the purpose of maintaining native wildlife habitat and population. (Amended Ord. 402, 12-21-10)
- L. Play Areas: No person shall engage in activities that interfere with another park user's active use of designated play areas. This shall be construed, but not be limited to, prohibiting the use of sleds, toboggans, or snowmobiles on any skating rinks, or other such conflicts of use. (Amended Ord. 402, 12-21-10)
- M. Protection Of Trees: It shall be unlawful to remove, cut or otherwise deface any tree or ground cover without consent from the Commission and written permission from the City Clerk.
- N. Posting Signs: It shall be unlawful to post any sign, placard, advertisement or inscription, or cause to be erected any sign, unless approved by the City Administrator or designee.
- O. Glass: No glass beverage containers will be allowed in any designated city park, park or recreation facility, or open space. (Amd. Ord. 365, 2-19-08; Amended Ord. 399, 9-7-10)

8-4-2: VIOLATIONS; PENALTIES:

- A. Any person, firm or corporation violating any of the provisions of Subsections 8-4-1A, B, F, G, H, K, L, N and O of this chapter shall be guilty of a petty misdemeanor and, upon conviction thereof, shall be punished in accordance with state law.
- B. Any person, firm or corporation violating any of the provisions of Subsections 8-4-1C, D, E, I, J and M of this chapter shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished in accordance with state law. (Amended Ord. 229, 9-2-1997)

³ See also subsection 5-1A-5B of this code.

CHAPTER 5 STREET LIGHTING SYSTEM

SECTION:

- 8-5-1: System Established
- 8-5-2: Administration Of Provisions
- 8-5-3: Rates, Fees And Charges
- 8-5-4: Non-liability Of City For Deficiencies
- 8-5-5: Damage To System Prohibited
- 8-5-6: Violation; Penalty

8-5-1: **SYSTEM ESTABLISHED:** The city does hereby make a provision for the establishment of a municipal street lighting system. The areas to be served shall be determined and approved by the City Council. (Ord. 252, 2-16-1999)

8-5-2: **ADMINISTRATION OF PROVISIONS:** The Engineering Department shall assume and discharge the responsibilities imposed by this chapter, along with such other duties as may be required or assigned to the department. (Ord. 252, 2-16-1999)

8-5-3: **RATES, FEES AND CHARGES:**

- A. Rates, Fees And Charges Established: The City Council shall adopt an ordinance which indicates a schedule of all rates, fees and charges for all street lighting service provided to residents¹. This ordinance may be amended from time to time to indicate any necessary change in rates, fees and charges. (Ord. 252, 2-16-1999; amd. 2003 Code)
- B. Prepayment Or Overpayment: Any prepayment or overpayment of charges may be retained by the city and applied on subsequent quarterly charges.
- C. Penalty For Late Payment: If a quarterly service charge is not paid when due, a penalty of ten percent (10%) shall be added thereto.
- D. Action To Collect Charges: On or before September 1 of each year, the City Clerk shall list the total unpaid charges for street lighting services against each separate lot or parcel to which they are attributable under this chapter. After notice and hearing as provided in Minnesota Statutes

¹ See Section 1-7-3 of this code.

Section 429.061, the City Council may spread the charges against the benefited property as a special assessment under Minnesota Statutes Section 429.101 and other pertinent statutes for certification to the County Auditor and collection along with the current taxes the following year. (Ord. 252, 2-16-1999)

8-5-4: **NONLIABILITY OF CITY FOR DEFICIENCIES:** The city shall not be liable for any deficiency or failure in supply of light to residents, whether occasioned by shutting off the system for the purpose of making repairs or connections or from any other cause whatsoever. (Ord. 252, 2-16-1999)

8-5-5: **DAMAGE TO SYSTEM PROHIBITED:** No unauthorized person shall remove, damage, alter or tamper with any structure or part of a street lighting system. (Ord. 252, 2-16-1999)

8-5-6: **VIOLATION; PENALTY:** Any person, firm or corporation who shall violate any provision of this chapter shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished as defined by state law. (Ord. 252, 2-16-1999)

CHAPTER 6
VACATIONS; STREET NAME CHANGES

SECTION:

- 8-6-1: Vacation Of Easements
- 8-6-2: Street Name Changes

8-6-1: **VACATION OF EASEMENTS AND RIGHT-OF-WAY:**

A. General Provisions:

- 1. Vacations of easements or right-of-way may be granted or denied in any district by action of the City Council.

B. Criteria For Granting Vacations of Easements or Right-Of-Way:

- 1. In granting vacations of easements or right-of-way, the City Council shall consider the advice and recommendation of the City Engineer and the effect of the proposed vacation on street, drainage and utility needs.
- 2. The Council shall also consider the proposed use of the easement or portion of easement to be vacated.

C. Procedure:

- 1. Pre-application Meeting: the applicant shall consult with the City Engineer to determine whether the proposed vacation would conflict with street, drainage or utility purposes. If it is determined that the proposed vacation will not negatively affect street, drainage or utility purposes an application may be filed with the Community Development Department.
- 2. Application: a completed application form must be submitted with the following application materials:
 - a. Survey of the property indicating the location of all street, drainage and utility easements and the easement or portion of easement to be vacated.
 - b. A legal description of the easement or portion of easement to be vacated.

c. The intended use of the easement or portion of easement to be vacated.

d. Any additional information necessary to demonstrate how modifications to the existing conditions will satisfy street, drainage and/or utility needs.

3. Notice To Adjacent Property Owners: Property owners and occupants within three hundred fifty feet (350') of the property in question shall be notified at least ten (10) days prior to the City Council meeting, although failure of any property owners or occupants to receive such notification shall not invalidate the proceedings. Notification shall be by mail.

4. Public Hearing: The City Council shall hold a public hearing to review and act on the application. The petitioner or representative shall be present to answer questions concerning the proposed vacation.

5. City Council Action: The City Council must take action on the application within sixty (60) days after the application has been received and determined to be complete by the Community Development Department. The City may extend review of the application an additional sixty (60) days provided a letter describing the reason for the extension is provided to the applicant within the first sixty (60) days.

6. Reapplication After Denial: No application for a vacation of easement or right-of-way shall be resubmitted for a period of one year from the date of said order of denial.

D. Time Limit On Implementing Vacation of Easement or Right-of-Way: If the City Council determines that no significant progress has been made in the first twelve (12) months after the approval of the application, the approval will be null and void.

E. Record Retention: Record of all vacations of easements and rights-of-way shall be kept on file in the Community Development Department and office of the City Clerk (Amended Ord. 314 10-4-2005).

8-6-2: **STREET NAME CHANGES**

A. General Provisions:

1. Street name changes may be initiated by the City Council.

B. Procedure:

1. Notice To Adjacent Property Owners: Property owners and occupants within three hundred fifty feet (350') of the property in question shall be notified at least ten (10) days prior to the City Council meeting, although failure of any property owners or occupants to receive such notification shall not invalidate the proceedings. Notification shall be by mail.
2. Public Hearing: The City Council shall hold a public hearing to review and act on the proposed street name change.
3. Street Name Change Notification: The Building Department shall maintain a list of parties to be notified of street name changes.

C. Record Retention: Record of all street name changes shall be kept on file in the office of the City Clerk. (Amended Ord. 314, 10-4-2005)